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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Eugene RAYFORD, v. G.J. GIURBINO, et al.,))))))	Civil No.07cv1684 W (AJB) Plaintiff, Order Denying Request for Appointment of Counsel [Doc. No. 48] Defendants.
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Plaintiff, a state prisoner proceeding *pro se* and *in forma pauperis*, has filed an action under 42 U.S.C. § 1983 alleging violation of his rights under the Eighth Amendment by prison officials. This is the second time the Plaintiff has requested appointment of counsel under the Civil Rights Act of 1964, 42 U.S.C. 2000e 5(f)(1), however, as the Court stated in its prior Order [Doc. No. 43], that section applies to employment actions and this action was brought under the Civil Rights Act, 42 U.S.C. §1983 and as such, 28 U.S.C. § 1915(e)(1) would apply to the instant request.

While the district court may appoint *pro bono* counsel for an indigent *pro se* litigant in a civil appeal pursuant to 28 U.S.C. § 1915(e)(1) in cases presenting exceptional circumstances,¹ the Plaintiff has presented no new grounds in the current request that were not raised in his November 21, 2008 request [Doc. No. 42]. The Court does not find that exceptional circumstances exist so as to justify an

¹ See *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981).

1 appointment of counsel. As such, and based upon the reasons set forth in this Court's Order of
2 November 24, 2008, Plaintiff's third request for appointment of counsel [Doc. No. 48] is DENIED.

3 IT IS SO ORDERED.
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5 DATED: December 10, 2008
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Hon. Anthony J. Battaglia
U.S. Magistrate Judge
United States District Court

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